

ORDINANCE NO. 2014 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
AMENDING TITLE 9 OF THE NATIONAL CITY MUNICIPAL CODE BY
ADDING CHAPTER 9.55 PERTAINING TO PROHIBITING SMOKING
IN AND AROUND MULTI-UNIT RESIDENCES AND DUPLEXES

NOW, THEREFORE, the City Council of the City of National City does ordain as follows:

SECTION I. FINDINGS. The City Council of the City of National City hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth; and
- Some of the most common types of cancers, including stomach, liver, uterine cervix, and kidney cancers, are related to tobacco use; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent; and

- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year; and exacerbates childhood asthma; and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion; and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion; and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005; and
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures from the year of its inception, 1989, and 2004, with savings growing yearly; and

WHEREAS, smoking is the primary cause of fire-related injuries and deaths in the home, as evidenced by the following:

- Cigarettes, cigars, pipes, and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 142,900 smoking-related fires, 780 deaths, 1,600 injuries, and \$606 million in direct property damage in 2006; and
- One in four fatalities from home fires caused by smoking is NOT the smoker whose cigarette started the fire, and 25% of those deaths were of neighbors or friends of the smoker; and
- Smoking in a residence where long-term oxygen therapy takes place is very dangerous as oxygen is a fire accelerant, and 27% of fatalities due to smoking during long-term oxygen therapy occurred in multifamily dwellings; and
- The United States Fire Administration recommends that people smoke outdoors; and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Secondhand smoke can seep under doorways and through wall cracks:" and
- Persons living in apartments near smokers can be exposed to elevated pollution levels for 24 hours a day. and at times, the particulate matter exposure can exceed the U.S. Environmental Protection Agency's 24-Hour Health Based Standard: and
- The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;²⁵ and

WHEREAS, most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

- Nearly 87% of Californians and 91% of California women are nonsmokers; and
- 74% of Californians surveyed approve of apartment complexes requiring at least half of rental units be nonsmoking; and
- 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units:" and
- 62% of California renters feel that there is a need for laws to limit smoking in apartments; and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California law; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, California law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance; and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance; and

NOW THEREFORE, it is the intent of the City Council in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users; by protecting children from exposure to smoking where they live and play; and by protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

SECTION 2. Title 9 of the National City Municipal Code is hereby amended by adding Chapter 9.55 to read as follows:

Chapter 9.55

PROHIBITING SMOKING IN AND AROUND
MULTI-UNIT RESIDENCES AND DUPLEXES

Sections:

- 9.55.010 Definitions.
- 9.55.020 No smoking permitted in common areas except in designated smoking areas.
- 9.55.030 No smoking permitted in exclusive use unenclosed areas.
- 9.55.040 Duplexes: Nonsmoking designations.
- 9.55.050 Common interest complex: Nonsmoking designations.
- 9.55.060 Rental complex: Nonsmoking designations.
- 9.55.070 Required and implied lease terms for all new and existing units in rental complexes.
- 9.55.080 Disclosure of smoking allowed units.
- 9.55.090 Smoking prohibited by law in certain areas.
- 9.55.100 Procedures and requirements for mandated submissions.
- 9.55.110 Smoking and smoke generally.
- 9.55.120 Penalties and enforcement.
- 9.55.130 Private enforcement.
- 9.55.140 Construction, severability.

Section 9.55.010 Definitions. For the purposes of this Chapter, the following definitions shall govern unless the context clearly requires otherwise:

A. "Common Area" means every enclosed area or unenclosed area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

B. "Common Interest Complex" means a multi-unit residence that is a condominium project a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code section 1351.

C. "Duplex" means a building containing exactly two (2) units sharing a common wall, floor, or ceiling, and which is not part of a multi-building multi-unit residence. For purposes of this Section, a "Duplex" includes, but is not limited to, a two-story structure on a single lot comprised of one complete Unit on each floor, or a structure on a single lot comprised of two

complete side-by-side Units sharing a common wall.

D. "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

1. any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical boundaries of any height whether or not those boundaries include vents or other openings; or
2. four (4) walls or other vertical boundaries that exceed six (6) feet in height whether or not those boundaries include vents or other openings.

E. "Landlord" means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single unit of a multi-unit residence.

F. "Multi-Unit Residence" means property containing three (3) or more units, except the following specifically excluded types of housing:

1. a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
2. a mobile home park;
3. a campground;
4. a marina or port;
5. a single-family home;
6. a single-family home with a detached in-law or second unit when permitted pursuant to California Government Code sections 65852, 65852.150, 65852.2, or an ordinance of the City of National City adopted pursuant to those sections; and
7. a duplex.

G. "New Unit" means a unit that is issued a certificate of occupancy more than 180 days after the effective date of this Chapter, and also means a Unit that is let for residential use for the first time more than 180 days after the effective date of this Chapter.

H. "Nonsmoking Area" means any Enclosed Area or Unenclosed Area of a Duplex or Multi-Unit Residence in which Smoking is prohibited by: (1) this Chapter or other law; (2) by binding agreement relating to the ownership, occupancy, or use of real property; or (3) by designation of a person with legal control over the area. In the case of a smoking prohibition established only by private agreement/or designation and not by this Chapter or other law, it shall not be a violation of this Chapter for a person to engage in smoking or to allow smoking in that area unless: (1) the person knows that smoking is not permitted; or (2) a reasonable person would know that smoking is not permitted.

I. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

J. "Rental Complex" means a multi-unit residence for which fifty percent (50%) or more of units are let by or on behalf of the same landlord.

K. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.

L. "Smoking" means engaging in an act that generates smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating electronic cigarette or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

M. "Unenclosed Area" means any area that is not an enclosed area.

N. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities. "Unit" includes without limitation: an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit. unit includes a new unit.

Section 9.55.020 No smoking permitted in common areas except in designated smoking areas.

A. Smoking is prohibited in all common areas pursuant to except that a person with legal control over a common area, such as, for example, a landlord or homeowners' association, may designate a portion of the common area as a designated smoking area provided that at all times the designated smoking area complies with paragraph B below.

B. a designated smoking area:

C. must be an unenclosed area.

D. Must be located away from any enclosed area that is a nonsmoking area. a person with legal control over a common area in which a designated smoking area has been designated shall modify, relocate or eliminate that designated smoking area so as to maintain compliance with the requirements of this Subsection D as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established.

E. Must have a clearly marked perimeter.

F. Must be identified by conspicuous signs.

G. No Person with legal control over a Common Area in which Smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the area.

H. Clear and unambiguous "No Smoking" signs shall be posted in efficient numbers and locations to make Common Areas where Smoking is prohibited by this Chapter or other law obvious to a reasonable person. The signs shall have letters of no less than one inch (1") in height or contain the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar). Such signs shall be maintained by the person or persons with legal control over the common areas. The absence of signs shall not be a defense to a violation of any provision of this Chapter

Section 9.55.030 No smoking permitted in exclusive-use unenclosed areas.
Notwithstanding any other provision of this Chapter, smoking is prohibited in all exclusive-use unenclosed areas associated with a unit, such as, for example, a private balcony, porch, deck, or patio, even if smoking is allowed inside the unit.

Section 9.55.040 Duplexes: Nonsmoking designations.

A. The premises of a duplex, including units, enclosed areas, and unenclosed areas, must be designated either 100% nonsmoking or 100% smoking allowed. This designation must be made by the landlord of the duplex, or by the membership of the homeowner's association if the

duplex constitutes a common interest complex. for duplexes consisting of new units, this designation must be made by the person or persons causing the construction of the New Units prior to occupancy. This designation must be made by the landlord or homeowners' association.

B. Smoking in a designated nonsmoking unit or on the premises of a designated nonsmoking duplex is a violation of this Chapter as provided in Section _____.

Section 9.55.050 Common interest complex: Nonsmoking designations.

A. All new units of a common interest complex are hereby designated nonsmoking units; provided, however, that a lesser percentage of units may be designated nonsmoking units if a common interest complex fully complies with Subsection D below.

B. All units of a common interest complex that are not new units, must be designated nonsmoking units before [insert effective date of ordinance + 4 years]; provided, however, that a lesser percentage of units may be designated nonsmoking units if a common interest complex fully complies with Subsection E below.

C. Smoking in a designated nonsmoking unit is a violation of this Chapter as provided in _____.

D. The person or persons causing the construction of a common interest complex consisting of new units may choose to permanently designate fewer than one-hundred percent (100%), but no less than eighty percent (80%) of units as nonsmoking Units by fully complying with the requirements stated in Subsections 1 through 3 below. Otherwise Subsection A above shall apply.

1. The designation must take place prior to occupancy.
2. Where possible, best efforts shall be made to group nonsmoking units together, both horizontally and vertically, and physically separate them from units where smoking may be allowed.

3. Upon designation, the following must be submitted in accordance with Section _____:

- i. a description of each designated nonsmoking unit sufficient to readily identify the unit: and
- ii. a diagram depicting the location of the designated nonsmoking units in relation to all other units.

E. By a vote of the membership as provided in Subsection 1 below, a common interest complex may choose to designate fewer than one-hundred percent (100%) of units as nonsmoking units by fully complying with the requirements stated in subsections (1) through (4) below. Otherwise Subsection B above shall apply.

1. A vote by the membership on the threshold question of allowing less than one hundred percent (100%) of units to be designated nonsmoking units must take place. For units that are not new units the vote must take place before [insert effective dale of ordinance + 3 years and 270 days].

2. Up to one hundred percent (100%). but no less than eighty percent (80%). of units shall be permanently designated as nonsmoking Units.

3. Where possible, best efforts shall be made to group nonsmoking units together, both horizontally and vertically, and physically separate them from units where smoking may be allowed.

4. No later than [insert effective dale of ordinance + 4 years] the final designations for units that are not new units must be made and the following must be submitted in accordance with Section _____.

- i. a description of each designated nonsmoking unit sufficient to readily identify the Unit: and
- ii. A diagram depicting the location of the designated nonsmoking units in relation to all other units.

Section 9.55.060 Rental Complex: Nonsmoking designations.

A. All new units of a rental complex are hereby designated nonsmoking units: provided, however that a lesser percentage of units in a multi-building rental complex may be designated nonsmoking units if a landlord fully complies with Subsection E below.

B. All units of a rental complex that are not new units must be designated nonsmoking units before [insert effective date of ordinance + 4 years]; provided, however, that a lesser percentage of units in a multi-building rental complex may be designated nonsmoking units if a landlord fully complies with Subsection E below.

C. Smoking in a designated nonsmoking unit is a violation of this Chapter as provided in Section _____.

D. Except if a landlord fully complies with subsection (e) below, at least sixty (60) days before [insert effective date of ordinance + 4 years], the landlord shall provide each tenant with:

- 1. a written notice clearly stating that all units, including the tenant's unit, are designated nonsmoking units, and that smoking in a unit will be illegal as of [insert date specified in Sec. *9(b)]; and

- 2. a copy of this Chapter.

E. A Landlord may choose to designate fewer than one-hundred percent (100%) of units of a multi-building rental complex as nonsmoking units by fully complying with the requirements stated in Subsections 1 through 7 below. However, Subsections A through B above shall apply whenever a landlord takes no action or only partially complies with the requirements of this Subsection.

- 1. The landlord shall permanently designate up to one hundred percent (100%) of units. but no less than eighty percent (80%) of units as nonsmoking units.

- 2. For multi-building rental complexes, a landlord may designate one or more buildings of a multi-building rental complex to contain units where smoking may be allowed, but only if:

- i. All units where smoking may be allowed shall be grouped together in the same building(s) of the multi-building rental complex, and no units where smoking may be allowed shall be located in the same building as nonsmoking units; and either

- ii. The combined number of units within the buildings contain no more than twenty percent (20%) of the total number of units on the multi-building rental complex premises; or

- iii. There is only one building that contains units where smoking may be allowed and that building contains the fewest number of units of any building in the multi-building rental complex, then it may be a smoking building even though it contains more than twenty percent (20%) of the total number of units.

- 3. No later than [insert effective date of ordinance + 3 years and 270 days] a landlord who chooses to designate fewer than 100% of the units of a multi-building rental complex as nonsmoking shall submit the following in accordance with Section _____.

- i. a description of each designated nonsmoking unit sufficient to identify the unit; and
 - ii. A diagram depicting the location of the designated nonsmoking units in relation to all other units.
4. At least sixty (60) days before submitting the nonsmoking unit designations required by Subsection 3 above, the landlord shall provide each tenant with:
 - i. a written notice of the proposed designations, clearly stating that smoking in a unit which is designated as a nonsmoking unit will be illegal as of (insert date specified in Section *9(b)), and inviting comments on the proposed designations of nonsmoking units within the requisite timeline;
 - ii. a diagram depicting the location of the designated nonsmoking units in relation to all other units; and
 - iii. a copy of this Chapter.
5. A Landlord may modify the proposed designations based upon comments received from tenants.
6. At least thirty (30) days before submitting the final designations of nonsmoking units required by Subsection 3 above, the Landlord shall provide all tenants written notice of the final designations clearly stating that smoking in a designated nonsmoking unit will be illegal as of [insert date specified in Section *9(b)]; and a copy of the final documents that will be submitted pursuant to Section _____ of this Chapter. These final designations may differ from the proposed designations on which tenants were invited to comment.
7. A unit in a rental complex for which a landlord is required to submit information pursuant to Section _____ of this Chapter, but for which such information, for any reason, is not fully and timely submitted is hereby designated as a nonsmoking Unit as of [insert effective date of ordinance + 4 years].

Section 9.55.070 Required and implied lease terms for all new and existing units in rental complexes.

A. Every lease or other rental agreement for the occupancy of a unit in a rental complex, including, for example, New units and existing units, entered into, renewed, or continued month-to-month after [insert effective date of ordinance], shall include the provisions set forth in subsection (b) below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

B. Every lease or other rental agreement for the occupancy of a unit in a rental complex, including, for example, new units and existing units, entered into, renewed, or continued month-to-month after [insert effective date of ordinance] shall be amended to include the following provisions:

1. A clause providing that as of [insert effective date of ordinance] for New Units and as of [insert effective date of ordinance + 4 years] for units that are not new units, it is a material breach of the agreement to allow or engage in smoking in the unit unless the landlord has supplied written notice that the unit has not been designated a nonsmoking unit and no other prohibition against smoking applies. such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in the unit as of [insert effective date of ordinance] for new units and as of [insert effective date of ordinance + 4 years] for units that are not new units unless landlord has provided written notice that the unit has not been designated a nonsmoking unit and smoking in the unit is not otherwise prohibited by this

agreement, other agreements, or by law."

2. A clause providing that it is a material breach of the agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property other than a designated smoking area. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists".

3. A clause providing that it is a material breach of the agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property".

4. A clause expressly conveying third-party beneficiary status to all occupants of the rental complex as to the smoking provisions of the agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern smoking. As such, other occupants of the property may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law".

C. Whether or not a landlord complies with Subsections A and B above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which Subsections A and B apply and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsections (a) or (b).

D. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a rental complex, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to: (i) the landlord; and (ii) any occupant of the rental complex who is exposed to smoke or who suffers damages as a result of the breach.

E. This Chapter shall not create additional liability in a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a rental complex if the landlord has fully complied with this Section and _____.

F. Failure to enforce any smoking provision required by this Chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself,

Section 9.55.080 Disclosure of smoking allowed units.

A. A landlord of a rental complex with less than one hundred percent (100%) nonsmoking units shall provide to every prospective tenant, prior to entering into a new lease or other rental agreement for the occupancy of a unit in a rental complex, a copy of the designation documents submitted pursuant to _____ describing each designated nonsmoking unit with an accompanying diagram depicting the location of nonsmoking units in relation to all other units and any designated smoking areas.

B. A seller of a rental complex or a unit in a common interest complex shall disclose to every prospective buyer, prior to sale, whether smoking may be allowed in the unit(s), and shall provide to the buyer a diagram depicting the location of nonsmoking units in relation to all other units and any designated smoking areas.

Section 9.55.090 Smoking prohibited by law in certain areas.

A. Smoking in a Common Area, on or after [insert effective date of ordinance], other than in a designated Smoking area established pursuant to Section _____, is a violation of this Chapter.

B. Smoking in a designated nonsmoking Unit, on or after [insert effective date of ordinance], is a violation of this chapter.

C. No Person shall engage in Smoking in any Nonsmoking Area.

D. _____ No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as provided in _____.

Section 9.55.100 Procedures and requirements for mandated submissions.

A. Submissions required by this Chapter must be received by [insert the municipal office or official who will administer the record-keeping requirements of the ordinance] on or before any applicable by this Chapter and such other materials and information as [insert the designated municipal office or official] deems necessary for the administration and enforcement of this Chapter.

B. All due date. The submissions shall include all material and information required material and information submitted pursuant to this Chapter constitute disclosable public records and are not private or confidential.

Section 9.55.110 Smoking and smoke generally.

A. The provisions of this Chapter are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this Chapter or other provisions of this Code, (ii) any failure by any Person to restrict Smoking under this Chapter, or (iii) any explicit or implicit provision of this Code that allows Smoking in any place, nothing in this Code shall be interpreted to limit any Person's legal rights under other laws with regard to Smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable-principles.

B. For all purposes within the jurisdiction of the City of National City, nonconsensual exposure to Smoke is a nuisance, and the uninvited presence of Smoke on residential property is a nuisance and a trespass.

Section 9.55.120 Penalties and enforcement.

A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Every instance of Smoking in violation of this Chapter is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this Chapter may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this Chapter shall be the responsibility of _____. In addition, any peace officer or code enforcement official also may enforce this Chapter.

C. Violations of this Chapter are subject to a civil action brought by the City of National City, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

D. No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks compliance with this Chapter. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person's effort to achieve compliance with

this Chapter. Violation of this subsection shall constitute a misdemeanor.

E. Causing, permitting, aiding, or abetting a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

F. Any violation of this Chapter is hereby declared to be a public nuisance.

G. In addition to other remedies provided by this Chapter or otherwise available at law or in equity, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

H. Except as otherwise provided, enforcement of this Chapter is at the sole discretion of the City of National City. Nothing in this Chapter shall create a right of action in any Person against the City of National City or its agents to compel public enforcement of this Chapter against private parties.

Section 9.55.030 Private enforcement.

A. Any Person, including a legal entity or organization or a government agency, acting for the interests of itself, its members, or the general public may bring a civil action to enforce this Chapter. Upon proof of a violation, a court shall award the following:

1. Damages in the amount of either:

i. upon proof, actual damages; or

ii. with insufficient or no proof of damages, \$500 for each violation of

this Chapter (hereinafter "Statutory Damages"). Each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no Person suing on behalf of the general public shall recover Statutory Damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public by another Person for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Person bringing the subsequent claim was a party to the prior adjudication.

2. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, retaliation, or a conscious disregard for the public health.

B. The Person may also bring a civil action to enforce this Chapter by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

C. Notwithstanding any legal or equitable bar against a Person seeking relief on its own behalf, a Person may bring an action to enforce this Chapter solely on behalf of the general public. When a Person brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the Person from bringing a subsequent action based upon the same facts but seeking relief on his, her or its own behalf.

D. Nothing in this Chapter prohibits a Person from bringing a civil action in small claims court to enforce this Chapter, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of that court.

Section 9.55.140 Severability. It is the intent of the City Council of the City of National City to supplement applicable state and federal law and not to duplicate or contradict such law, and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining

sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of National City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

PASSED and ADOPTED this _____ day of _____, 2014.

Ron Morrison, Mayor

ATTEST:

Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

Claudia G. Silva
City Attorney